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Trial and Law Report  
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UNITED NATIONS WAR CRIMES COMMISSION

THE TRIAL OF

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|----|------------------------------|--|
| 1. | <u>Kriminalsekretär</u>      | <u>BRUNS, Richard Wilhelm Hermann,</u>     |
| 2. | <u>Kriminalassistent</u>     | <u>SCHUBERT, Rudolf Theodor Adolf, and</u> |
| 3. | <u>Kriminaloberassistent</u> | <u>CLEMENS, Emil.</u>                      |

Sentence of the Eidsivating Lagmannsrett,

20th March, 1946.

Report by the Norwegian Representative,

J. Aars Rynning

Charge 1: Murder,

Charge 2: Brutal torture of Norwegian citizens.

Main legal questions dealt with by the Court:

1. Whether the Norwegian underground Military Organisation and its activities were at variance with international law, and  
  
Whether the Germans in fighting this organisation were justified in using methods contrary to international law as a means of reprisal,
2. The plea of Superior Orders, and
3. The plea of Duress.

Public Prosecutor: Statsadvokat Harald Sund,

Counsel for the Defence: Høyesterettsadvokat Adam Hjorth.

Indictment:

I. Pruns, Richard Wilhelm Hermann (born 28th June, 1900,) - K.s.

Kriminalsekretär Pruns was charged by the Director of Public

Prosecutions with having committed war crimes which were in violation of:

1. # 233 of the Civil Criminal Code, and # 3 of the Provisional Decree of 4th May, 1945,
2. # 231 of the Civil Criminal Code, with which should be read # 232; Provisional Decree of 4th May, 1945; and the Law of 6th July, 1945,
3. ### 228 and 229 of the Civil Criminal Code, Provisional Decree of 4th May, 1945, and the Law of 6th July, 1945.

Statement of Facts

1. On 17th April, 1945, Bruns and Schubert (defendant No. 2) went to arrest Reidar Andresen who was in charge of the arms of the illegal Military Organisation. They rang the bell at his flat and the door was opened by Reidar Andresen's brother John, who slammed it as soon as he saw the Germans. When John refused to open in spite of orders, Schubert fired several shots with his automatic through the door. When the door finally gave in, Bruns fired some shots at random through the opening. John Andresen was mortally wounded and died later in hospital.

2.

a. In March or April, 1943, Bruns fired from a distance of 25-30 m. at a Norwegian prisoner Ulrich Glöersen who was trying to escape. The shot was aimed at the prisoner's legs but, as he was stooping at that moment, he was hit in the head and killed.

b. On 19th December, 1942, Bruns supervised the interrogation of a sick Norwegian, Oistein Jahren. Legs screws were fastened to his legs and he was beaten with various implements. Later he was thrown unconscious into a cellar, where he remained for four days before receiving medical attention.

3.

a. Between 1942 and 1945, Bruns used the method of 'verschärfte Vernehmung' on 11 Norwegian citizens. This method involved the use of various implements of torture, cold baths and blows and kicks in the face and all over the body. Most of the prisoners suffered for a considerable time from the injuries received during those interrogations.

b. In February and March, 1945, Bruns ordered Klinge (See Trial and Law Report Series, No. 30) to give Carl Oddvar Erichsen 'verschärfte Vernehmung' though he knew that the prisoner was considerably weakened as a result of previous brutal interrogations. Erichsen collapsed after an ice cold bath and died the same day.

II. Schubert, Rudolf Theodor Adolf (born 15th September, 1908) - K.a.

Kriminalassistent Schubert was charged by the Director of Public Prosecutions with having committed war crimes which were in violation of:

1. # 229 of the Civil Criminal Code, with which should be read # 232 and # 3 of the Provisional Decree of 4th May, 1945,
2. ### 228 and 229 of the Civil Criminal Code, and the Provisional Decree of 4th May, 1945.



Statement of Facts.

1. (See Bruns - Statement of Facts, 1.)

2. Between 1942 and 1945, Schubert gave 14 Norwegian prisoners 'verschärfte Vernehmung', using various instruments of torture and hitting them in the face and over the body. Many of the prisoners suffered for a considerable time from the effects of these injuries.

III. Clemens, Emil (born 18th November, 1908) - K.o.a.

Kriminaloberassistent Clemens was charged by the Director of Public Prosecutions with having committed war crimes which violated:

1. # 233 of the Civil Criminal Code, and # 3 of the Provisional Decree of 4th May, 1945,
2. ## 228 and 229 of the Civil Criminal Code, with which should be read # 232; and of the Provisional Decree of 4th May, 1945.

Statement of Facts

1. On 1st February, 1945, Clemens shot the Norwegian prisoner Reidar Knudsen from a distance of 1.5 m. Knudsen had been trying to escape.

2. Between 1943 and 1945, Clemens employed the method of 'verschärfte Vernehmung' on 23 Norwegian prisoners. He used various instruments of torture and cold baths. Some of the prisoners are still suffering from the injuries received at his hands.

The case against Bruns, Schubert and Clemens was in the first instance tried by the Eidsivating Lagmannsrett (Court of Criminal Appeal). During the trial several witnesses were called for both the prosecution and the defence.

Verdict:

Defendant Bruns was acquitted on Count 1 and 2 of the indictment. Defendant Schubert was acquitted on Count 1 of the indictment and defendant Clemens was acquitted on Count 1 of the indictment.

All three defendants were found guilty of the torture charges with the exception of one or two minor instances.

Sentence of the Lagmannsrett on 20th March, 1946

All three defendants were sentenced to death by shooting.

Notes on the Sentence by the Lagmannsrett

Considering Count 1 in the indictment against Bruns and Schubert, the Court established that both defendants were aware that, when firing through the door and later at random into the room, they might hit John Andresen. The Court also established that the wounds from which John Andresen died had been inflicted by Bruns's pistol and Schubert's automatic. The Court found, however, that the defendants could not be held guilty of murder as they were trying to arrest a man who was in charge of the arms of the illegal Military Organisation and they had expected armed resistance.



It appeared later that Reidar Andresen was not at home that night and that arms were never kept in the flat, but the defendants may not have known that and may have thought that they were encountering armed resistance.

Bruns and Schubert were found not guilty of the murder of John Andresen.

On considering Count 2 a of the indictment against Bruns, the Court felt satisfied that the defendant, when trying to stop Glöersen from escaping, had aimed at his legs but that, as the prisoner stooped at that very moment, the shot hit him in the head. The Court came to the conclusion that, as the prisoner had not stopped when ordered to do so, the defendant had acted within his rights in shooting at him. Glöersen was an important official in the illegal intelligence service and his capture was of great importance to the German authorities, and the only way to stop him from getting away was to shoot at him. The Court, therefore, did not consider the defendant guilty of the murder of Glöersen.

As regards Count 2 b of the indictment against Bruns, the Court established beyond doubt that Øistein Jahren had been most brutally ill-treated, but, as it had not been possible to ascertain the defendant's part in the torture, the Court gave him the benefit of the doubt and acquitted him on that count of the indictment.

On considering Count 1 of the indictment against Clemens, the Court established that Reidar Knudsen had been trying to escape and that the defendant had not exceeded his rights in trying to prevent him from escaping by shooting at him. The Court, therefore, held the defendant not guilty on Count 1 of the indictment.

Counsel for the defence pointed out that the Military Organisation and its activities were at variance with International Law and that the Germans in fighting the organisation were, therefore, justified in using methods contrary to international law. The German methods of carrying out interrogations had to be regarded as constituting reprisals.

The Court could not accept this point of view. The Military Organisation was established in 1941, and soon had members all over the country, with its centre in Oslo. In 1945, it had more than 40,000 members. The organisation received its orders from the Norwegian High Command in England and its task was to take part in the fight for freedom and to organise acts of sabotage.

The members of the organisation were instructed in the use of small arms and had courses in explosives and other means of sabotage with a view to partisan warfare. Such warfare did not take place. The skirmishes which occurred between the men of the home forces and German groups were of a casual nature. It was not till the German capitulation that the Military Organisation mobilised. During the occupation its activities comprised mainly organising, training, military intelligence and some sabotage. The members were not in uniform and bore no special marks of distinction on such occasions. Nor did they carry their weapons openly. They had, therefore, no rights as soldiers according to Article 1 of the Regulations of Land Warfare (Hague Regulations). On the other hand they had no unlawful weapons, they did not attack objectives contrary to the Hague Regulations nor did they commit any other acts at variance with the laws and customs of war. Thus their activities were permissible



according to international law, but they had no rights as soldiers as long as they did not appear in uniform, did not bear marks of distinction and did not carry their arms openly. They could, therefore, be shot when caught.

In the opinion of the Court, this underground military movement did not constitute a breach of international law and therefore the Germans were not justified in using torture against its members as a means of reprisal.

Further, the defendants had pleaded superior orders in all torture charges. In the beginning only the Chief of the Sipo, Fehlis, had any right to give such orders. Later that right was extended to those under him, first to Stubann Reinhardt, chief for Abteilung IV, and then to Fehmer who was in charge of counter-espionage and matters concerning the Military Organisation. Bruns, who was directly responsible to Fehmer, and other Sachbearbeiter often employed torture of their own accord, though as a rule with the connivance of their superiors. The Court took it for granted that the defendants, when employing torture during interrogations in order to extort confessions or information, acted to the best of their belief in the interest of their country.

The Court could not accept the defendants' plea that they would have been in serious danger from their superiors had they refused to perform such acts of alleged duty. The Court could not believe that a state, even Nazi Germany, could force its subjects, if they were unwilling, to perform such brutal and atrocious acts as those the defendants were guilty of. There was no doubt that the German methods were effective. Their investigations were solely based on betrayal and torture. But for these methods they would never have succeeded in interfering with the movement to the extent they did.

On the other hand, the Germans had omitted to try a considerable number of prisoners whom they could have sentenced to death for sabotage or participation in the activities of illegal organisations without infringing the laws and customs of war.

In deciding the degree of punishment, the Court found it decisive that the defendants had inflicted serious physical and mental suffering on their victims, and did not find sufficient reason for a mitigation of the punishment according to the provisions laid down in # 5 of the Provisional Decree of 4th May, 1945. The Court came to the conclusion that such acts, even though they were committed with the connivance of superiors in rank or even on their orders, must be regarded and punished as serious war crimes. If a nation, which without warning has attacked another, finds it necessary to use such methods to fight opposition, then those guilty must be punished, both those who gave the orders and those who carried them out.

As extenuating circumstances, Bruns had pleaded various incidents in which he had helped Norwegians, defendant Schubert had pleaded difficulties at home, and defendant Clemens had pointed to several hundred interrogations during which he had treated prisoners humanely.

The Court did not consider any of the above-mentioned circumstances as sufficient reason for mitigating the punishment and found it necessary to act with the utmost severity. Each of the defendants was responsible for a series of incidents of torture, every one of which could according to # 3 a, c and d of the Provisional Decree of 4th May,



1945, be punished by the death sentence.

Appeal:

All three defendants appealed to the Supreme Court. According to the Norwegian law of criminal procedure, the sentence of the Lagmannsrett cannot be appealed against on questions of fact but only on questions of law and on the degree of punishment. The appeal was based on the following arguments:

(a) The acts of torture which the defendants had committed were permitted according to international law as reprisals against the illegal Military Organisation whose activities were at variance with international law.

(b) The acts were carried out on superior orders and the defendants had acted under duress.

(c) The acts of torture had in no case resulted in death. Most of the injuries inflicted were of a light character and did not result in permanent disablement.

Decision of the Supreme Court; 3rd July, 1946

The Supreme Court upheld the sentence of the Lagmannsrett and rejected the appeal.

Notes on the Decision of the Supreme Court:

Judge Larssen in dealing with the defendants' appeal point by point said that it could not be established that the acts of torture had been carried out as reprisals. Reprisals were commonly understood to aim at changing the adversary's conduct and forcing him to keep to the commonly accepted rules of lawful warfare. If this aim were to be achieved, the reprisals must be made public and announced as such. During the whole of the occupation there was no indication from the German side to the effect that their acts of torture should be regarded as reprisals against the Military Organisation. They appeared to be German police measures to extort information during interrogations - information which could be used to punish people or could eventually have lead to real reprisals to stop activities about which information was gained. The method of 'verschärfte Vernehmung' was only a German routine police method and could, therefore, not be regarded as a reprisal.

In Judge Larssen's opinion it was not, therefore, necessary to deal with the question whether the various acts of the Military Organisation were contrary to international law and whether they as such justified reprisals.

As to the second point of the appeal - that the acts of torture were performed on superior orders and committed under duress - Judge Larssen said that he supported what had been said by the Lagmannsrett on that point. There was no definite proof that such orders had been given. The Lagmannsrett had established that on many occasions the defendants had used torture on their own accord but frequently with the connivance of their superiors. The Lagmannsrett had also established that the defendants would have been in no serious danger had they refused to perform such acts of alleged duty. New evidence had come forth in support of the latter assumption. The Supreme Court

was in possession of two documents, a report from Hans Latza, President of the S.S. Polizeigericht Nord, dated 4th December, 1945, and another from Dr. Helmut Schmidt of the same Polizeigericht, dated March, 1945. The latter wrote in his report: "I regret that the Sipo did not report cases of torture. Those involved would certainly have been punished". It is evident that at least that particular Polizeigericht would not have punished any leniency towards prisoners in cases where the method of 'verschärft Vernehmung' was employed.

Judge Larssen stated that the pleas of superior orders and of duress could not be applied in the case of these three defendants.

Considering the third point of the appeal, in which the defendants pleaded that their acts of torture had in no case resulted in death or permanent disablement, Judge Larssen found that the acts that had been committed were not casual violations of various paragraphs of Norwegian law but constituted a methodically carried out ill-treatment of Norwegian patriots, conducted throughout several years. He had found no extenuating circumstances and therefore voted for the rejection of the appeal. The four other judges agreed with Judge Larssen's decision.